

**RULES
OF
TENNESSEE DEPARTMENT OF INSURANCE
INSURANCE DIVISION**

**CHAPTER 0780-1-17
RULES AND REGULATIONS COVERING THE SALE, ISSUANCE AND DELIVERY OF BOTH
INDIVIDUAL AND GROUP VARIABLE ANNUITY
CONTRACTS AND VARIABLE LIFE CONTRACTS**

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0780-1-17-.01 PURPOSE. The purpose of this Rule is to regulate the sale, issuance and delivery of Variable Contracts and to provide for the licensing of applicants to engage in business as Variable Contract agents.

Authority: T.C.A. §56-3-508. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 6, 1978; effective March 8, 1978.

0780-1-17-.02 DEFINITIONS.

- (1) The term “variable contract”, when used in this Chapter, shall mean any policy or contract which provides for life insurance or annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in T.C.A. §§ 56-3-501.
- (2) “Agent”, when used in this Chapter, shall mean any person who under the laws of this State is licensed as a life insurance agent.
- (3) “Variable contract agent”, when used in this Chapter, shall mean an agent who shall sell or offer to sell any variable contract.

Authority: T.C.A. §56-3-508. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 6, 1978; effective March 8, 1978.

**0780-1-17-.03 QUALIFICATION OF INSURANCE COMPANIES TO ISSUE
VARIABLE CONTRACTS**

- (1) No company shall deliver or issue for delivery variable contracts within the State unless
 - (a) it is licensed or organized to do a life insurance or annuity business in this State and
 - (b) the Commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In this connection, the Commissioner shall consider among other things:
 1. The history and financial condition of the company;

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2. The character, responsibility and fitness of the officers and directors of the company; and The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.
- (2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the Commissioner to have satisfied the provisions of clause (b) of Paragraph (1) hereof if either it or such admitted life company satisfied the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this State for a period of at least 3 years may be deemed to have satisfied the Commissioner with respect to clause (b) of Paragraph (1) above.
- (3) Before any company shall deliver or issue for delivery variable contracts within this State, it shall submit to the Commissioner (a) a general description of the kinds of variable contracts it intends to issue, (b) if requested by the Commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts, and (c) if requested by the Commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

Authority: T.C.A. §56-3-508. **Administrative History:** Original rule certified June 10, 1974.

0780-1-17-.04 SEPARATE ACCOUNT OR SEPARATE ACCOUNTS.

- (1) A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to T.C.A. § 56-3-501, subject to the following provisions of this Article:
 - (a) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subparagraph (b) hereof, 1. amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this State governing the investments of life insurance companies and 2. the investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
 - (b) Reserves for 1. benefits guaranteed as to dollar amount and duration and 2. funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of such separate account at least equal to such reserve liability is invested in accordance with the laws and regulations of this State governing the investments of life insurance companies. Such portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company. If a variable contract includes incidental minimum guarantees as referred to in Subparagraph (c) of paragraph (4) of Rule 0780-1-17-.06, this paragraph shall apply only to the reserve for any excess of such minimum guarantees over the reserves for the benefits that would be payable under the contract if there were no such minimum guarantees.
 - (c) With respect to 75% of the market value of the total assets in a separate account, no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this State.
 - (d) Unless otherwise permitted by law or approved by the Commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as

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a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

- (e) The same separate account may not be used for both variable annuities and variable life insurance.
 - (f) The limitations provided in Subparagraphs (c), (d), and (e) above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with Subparagraphs (c) and (d) hereof.(2) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in clauses 1.and 2. of Subparagraph (b) of paragraph (1) shall be valued in accordance with the rules otherwise applicable to the company's assets.
- (3) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.
- (4) Notwithstanding any other provisions of law a company may
- (a) with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company, or
 - (b) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others to manage such separate account and the investment of its assets.

A company, committee, board or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the Commissioner approves such provisions as not hazardous to the public or the company's policyholders in this State.

- (5) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer to securities having a valuation which could be readily determined in the market place, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

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- (6) The company shall maintain in each such separate account assets with a value at least equal to the reserve and other contract liabilities with respect to such account, except as may otherwise be approved by the Commissioner.
- (7) Rules under any provision of the Insurance Laws of this State or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.

0780-1-17-.05 FILING OF CONTRACTS.

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this State with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.

0780-1-17-.06 CONTRACTS PROVIDING FOR VARIABLE BENEFITS.

- (1) Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this State shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.
- (2) Illustrations of benefits payable under immediate variable contracts shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit the use of hypothetical assumed investment results to illustrate possible levels of benefits. If an illustration is used, it shall contain three standard rates: 0, 4 and 8%. These are gross rates before asset charges against the separate account (and also before asset charges against the fund in the case of a unit investment trust) but after taxes, and the illustration should state this clearly. As long as the illustration showed results at these three standard rates, results at other rates not in excess of 8% may be included to assist the buyer in his understanding.
- (3) No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this State unless it contains in substance the following provisions or provisions which in the opinion of the Commissioner are more favorable to the holders of such contracts:
 - (a) A provision that there shall be a period of grace of 30 days or of one month, within which any periodic stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;
 - (b) A provision that, at any time within three (3) years from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash

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surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;

- (c) A provisions specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such a paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.
- (4) No individual variable life insurance policy shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the Commissioner are more favorable to the holders of such policies:
- (a) A provision that there shall be a period of grace of 30 days or of one month, within which payment of any premium after the first may be made, during which period of grace the policy shall continue in force, but if a claim arises under the policy during such period of grace before the overdue premiums or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, together with interest, may be deducted from any amount payable under the policy in settlement. The policy may contain a statement of the basis for determining any variation in benefits that may occur as a result of the payment of premium during the period of grace.
 - (b) A provision that the policy will be reinstated at any time within three (3) years from the date of default, unless the cash surrender value has been paid or unless the period of extended insurance has expired, upon the application of the insured and the production of evidence of insurability, including good health, satisfactory to the insurer and the payment of an amount not exceeding the greater of 1. all overdue premiums and the payment of any other indebtedness to the insurer upon said policy with interest, or 2. 110% of the increase in cash surrender value resulting from reinstatement.
 - (c) A provision for cash surrender values and paid-up insurance benefits available as non-forfeiture options under the policy in the event of default in a premium payment after premiums have been paid for a specified period. If the policy does not include a table of figures for the options so available, the policy shall provide that the company will furnish at least once in each policy year a statement showing the cash value as of a date no earlier than the prior policy anniversary. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the Commissioner of the jurisdiction in which the policy is delivered, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the contract at all times from the date of issue should be equal to the assumed investment increment factor ifthe contract provides for such a factor, or 3½% if not, with premiums and benefits determined accordingly under the terms of the policy, the resulting cash values and other nonforfeiture benefits would be at least equal to the minimum values required by T.C.A. § 56-7-401, (Standard Non-Forfeiture Law), for a fixed dollar policy with such premiums and benefits. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee under a policy which provides for an assumed investment increment factor that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the contract at all times from the date of issue had been equal to such factor.

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- (5) Any variable annuity contract delivered or issued for delivery in this State shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:
- (a) The annual net investment increment assumption shall not exceed 5%, except with the approval of the Commissioner;
 - (b) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modifications of that table not having a lower life expectancy at any age, or, if approved by the Commissioner, from another table.

“Expense”, as used in this Paragraph, may exclude some or all taxes, as stipulated in the contract.

- (6) Any individual variable life insurance policy delivered or issued for delivery in this State shall stipulate the investment increment factor to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder and shall guarantee that expense and mortality results shall not adversely affect such dollar amounts.
- (7) The reserve liability for variable contracts shall be established pursuant to the requirements of T.C.A. § 56-1-402, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.
- (8) A company issuing variable life insurance contracts with a stated amount of guaranteed minimum death benefit shall hold in a separate account assets at least equal to the entire reserve for the death benefit (such reserve being determined in accordance with paragraph (7) above), except that additional assets supporting the reserve described in (a) below shall be maintained in the company’s general account.
- (a) The portion of the reserve in the general account is to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would have been paid in the absence of such guarantee. Such additional reserve shall be accumulated from amounts regularly allocated by the company for this purpose and shall be charged with any excess of the actual death benefits paid by the company on such variable life insurance contracts over the death benefits that would have been payable in the absence of the guaranteed minimum death benefit.
 - (b) In no event, however, may the portion of the reserve maintained in the general account be less than either of the two minimum reserves described in (c) and (d) below.
 - (c) The first minimum reserve equals the aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each such variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment increment factor.
 - (d) The second minimum reserve equals the aggregate total of the “attained age level” reserves on each such variable life insurance contract. The “attained age level” reserve on each such variable life insurance contract shall not be less than zero and shall equal the “residue”, as described in (e) below, of the prior year’s “attained age level” reserve on the contract, with any such “residue” increased or decreased by a payment computed on an attained age basis as described in (f) below.

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- (e) The “residue” of the prior year’s “attained age level” reserve on each such variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year’s reserve, deducting the tabular claims based on the “excess”, if any, of the guaranteed minimum death benefit, over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by a tabular probability of survival. The “excess” referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.
- (f) The payment referred to in (d) above shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (i) minus (ii) minus (iii), where (i) is the present value of the future guaranteed minimum death benefits, (ii) is the present value of the future death benefits that would be payable in the absence of such guarantee and (iii) is any “residue”, as described in (e) above, of the prior year’s “attained age level” reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (i) minus (ii) minus (iii). The amounts of future death benefits referred to in (ii) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment increment factor and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life insurance contracts.
- (g) The valuation interest rate and mortality table used in computing the two minimum reserves described in (c) and (d) above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserves, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.

0780-1-17-.07 REQUIRED REPORTS.

- (1) Any company issuing individual variable contracts shall mail to the contractholder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the Insurance Commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.
- (2) Any company issuing individual variable contracts shall mail to the contractholder at least once in each contract year after the first at his last address known to the company, a statement reporting as of a date not more than four months previous to the date of mailing: (a) in the case of an annuity contract under which payments have not yet commenced, 1. the number of accumulation units credited to such contract and the dollar value of a unit, or 2. the value of the contractholder’s account; and (b) in the case of a life insurance policy, the dollar amount of the death benefit.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.

0780-1-17-.08 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the Commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with the regulations.

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(Rule 0780-1-17-.08, continued)

Authority: T.C.A. §56-3-508. Administrative History: Original rule certified June 10, 1974.

0780-1-17-.09 LICENSE REQUIRED OF AGENTS.

- (1)
 - (a) No agent shall be eligible to sell or offer for a variable contract unless prior to making any solicitation or sale of such contract, he also be licensed as a variable contract agent. However, any agent who is licensed as a variable contract agent on the effective date of this rule shall continue to be licensed as a variable contract agent.
 - (b) Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.
- (2) Any agent applying for a license as a variable contract agent shall do so by filing with this Department his application. All such applications shall be in writing on uniform forms prescribed by the Commissioner and shall be accompanied by a filing fee of twenty dollars (\$20.00). Such filing fee shall not be refundable. The applicant shall, upon oath, answer such interrogatories as the Commissioner may require in such application, and the application shall be certified by an authorized representative of an insurance company lawfully authorized in the state to write variable contracts.
- (3) There shall not be a written examination for a variable contract agent; however, as a prerequisite to be so licensed as a variable contract agent, the following requirements shall be met:
 - (a) The applicant shall be a duly licensed life insurance agent at the time he files his application for a variable contract license.
 - (b) He shall be duly qualified by examination under one or more of the following:
 1. Any State Securities Sales Examination accepted by the Securities and Exchange Commission;
 2. The National Association of Securities Dealers, Inc. Examination for Principals, or Examination for Qualification as a Registered Representative;
 3. The various securities examinations required by the New York Stock Exchange, the American Stock Exchange, Pacific Stock Exchange, or any other registered national securities exchange;
 4. The Securities and Exchange Commission test given pursuant to Section 15(b) (8) of the Securities Exchange Act of 1934.
- (1) Except as modified by this Rule, state statutes and Rules of this Department governing the licensing of life insurance agents shall apply hereto.
- (2) Each variable contract agent shall be required to hold a Certificate of Authority with any insurer for which he is to place a contract of insurance. All new, renewal or duplicate certificates shall be issued in accordance with T.C.A. § 56-6-120. The termination of such a certificate shall be in accordance with § 56-6-121.
- (3) Any person licensed in this State as a variable contract agent shall immediately report to the Commissioner (a) any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other State or Territory of the United States, (b) the imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis, (c) any judgment or injunction entered against him on the basis of

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conduct deemed to have involved fraud, deceit, misrepresentation or violation of any insurance or securities law or regulation.

- (1) The Commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar such applicant or such agent from being licensed to sell Life insurance contracts in this State. The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.
- (2) A non-resident applicant may qualify for a variable contract license only if he holds a like license in his state of domicile and that such other state and this state has a reciprocal agreement for the purpose of licensing variable contract agents.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974. Amendment filed February 6, 1978; effective March 8, 1978.

0780-1-17-.10 DISCLOSURE.

- (1) The following information shall be furnished to an applicant for a contract of variable life insurance prior to execution of the application:
 - (a) A summary description of the insurance company and its principal activities.
 - (b) A summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account.
 - (c) A brief description of the investment policy for the separate account with respect to such contract.
 - (d) A list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the Commissioner of the state of domicile.
 - (e) Summary financial statements of the insurance company and such separate account based upon the last annual statement filed with such Commissioner, except that for a period of four months after the filing of any annual statement the summary required hereby may be based upon the annual statement, immediately preceding such last annual statement, filed with such Commissioner.
 - (f) The insurance company may include such additional information as it deems appropriate.
- (2) Any disclosure document or prospectus required by and filed with the Securities and Exchange Commission under any applicable Federal act shall be deemed to comply with Paragraph (1) above to the extent such information is contained in the disclosure document or prospectus; provided that a copy of the disclosure document or prospectus must be delivered to an applicant for a contract of variable life insurance before execution of the application form.
- (3) A copy of the statement containing the foregoing information shall be filed with such Commissioner prior to any use thereof and shall be subject to disapproval if found to be inaccurate or misleading.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.

0780-1-17-.11 EFFECTIVE DATE.

This chapter shall become effective on May 24, 1973.

Authority: T.C.A. §56-3-508. *Administrative History:* Original rule certified June 10, 1974.